Supreme Court, U.S.
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No. 97-1472

# IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1997

MICHAEL A. HADDLE,

Petitioner,

v.

JEANETTE G. GARRISON, DENNIS KELLY, G. PETER MOLLOY, JR., HEALTHMASTER, INC., CHRISTOPHER GARRISON, individually and as Trustee for certain trusts, and JOHN DOES 1 through N, individually and as Trustees of certain trusts,

Respondents.

***On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit***

## MOTION TO DISMISS WRIT OF CERTIORARI AS IMPROVIDENTLY GRANTED

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## TABLE OF CONTENTS


TABLE OF CONTENTS ..... *i*

TABLE OF AUTHORITIES ..... *iii*

INTRODUCTION ..... 1

STATEMENT OF THE CASE ..... 1

REASONS WHY THE WRIT OF CERTIORARI SHOULD BE DISMISSED ..... 3

A. The Full Faith and Credit Statute ..... 3

B. Collateral Estoppel Under Georgia Law .. 4

C. This Court Should Dismiss the Writ of Certiorari Rather Than Issue an Advisory Opinion ..... 9

CONCLUSION ..... 10

Order of the United States District Court for the Southern District of Georgia dated June 25, 1996 ..... A-1

Order of the Superior Court of Richmond County State of Georgia dated June 10, 1997 .... B-1

Opinion of the United States Court of Appeals for the Eleventh Circuit dated December 5, 1997 . C-1

Opinion of the Court of Appeals of Georgia dated June 16, 1998 ..... D-1

Order of the Court of Appeals of Georgia Denying Motion for Reconsideration dated July 7, 1998 ..... E-1

Amended Complaint filed by Plaintiff Michael A. Haddle in the United States District Court for the Southern District of Georgia dated March 27, 1996 ..... F-1

Complaint filed by Plaintiff Michael A. Haddle in the Superior Court of Richmond County State of Georgia dated July 9, 1996 ..... G-1



## TABLE OF AUTHORITIES

### CASES

*Allen v. McCurry*, 449 U.S. 90, 101 S. Ct. 411 (1980). ... 4

*Brever v. Rockwell International Corp.*, 40 F.3d 1119 (10th Cir. 1994) ..... 7

*Department of Human Resources v. Fleeman*, 263 Ga. 756, 439 S.E.2d 474 (1994) ..... 4

*Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521, 77 S. Ct. 457 (1957) ..... 10

*Gardner v. Parson*, 874 F.2d 131 (3d Cir. 1989) ..... 4

*Jim West Housemovers v. Cobb County*, 259 Ga. 314, 380 S.E.2d 251 (1989) ..... 5

*Kent v. Kent*, 265 Ga. 211, 452 S.E.2d 764 (1995) ..... 5

*Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 102 S. Ct. 1883 (1982) ..... 4

*LaRocca v. Gold*, 662 F.2d 144 (2d Cir. 1981) ..... 4

*McCracken v. City of College Park*, 259 Ga. 490, 384 S.E.2d 648 (1989) ..... 6

*Migra v. Warren City Sch. District Board of Educ.*, 465 U.S. 75, 104 S. Ct. 892 (1984) ..... 3

*Sanchez v. City of Santa Ana*, 936 F.2d 1027 (9th Cir. 1990) ..... 4

*Summer-Minter & Associates v. Giordano*, 231 Ga. 601, 203 S.E.2d 173 (1974) ..... 6

*Triangle Improvement Council v. Ritchie*, 402 U.S. 497, 91 S. Ct. 1650 (1971) ..... 9

*Usher v. Johnson*, 157 Ga. App. 420, 278 S.E.2d 70 (1981) ..... 6

*Waldroup v. Greene County Hospital Authority*, 265 Ga. 864, 463 S.E.2d 5 (1995) ..... 5

*Windsor v. The Tennessean*, 719 F.2d 155 (6th Cir. 1983) ..... 4

**STATUTES**

18 U.S.C. § 1503 ..... 8

28 U.S.C. § 1738 ..... 1,3,4,10

42 U.S.C. § 1985 ..... *passim*



**MISCELLANEOUS**

2 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4015 ..... 9

*Haddle v. Garrison*, No. 96-9072 (11th Cir. Dec. 5, 1997) ..... 2

*Haddle v. Garrison*, No. 96-RCCV-572 (Superior Court of Richmond County, Georgia, June 10, 1997) . 2

*Haddle v. Garrison*, No. A98A0020 (Ga. App. June 16, 1998) ..... 3

*Haddle v. Garrison*, No. CV196-29 (S.D. Ga. June 25, 1996) ..... 2

## INTRODUCTION

Pursuant to Supreme Court Rule 21, Respondents Jeanette G. Garrison, Christopher Garrison, HLM, Inc. (f/k/a Healthmaster, Inc.) and G. Peter Molloy, Jr. (collectively "Respondents") file this Motion for Dismissal of the Writ of Certiorari. The statute upon which Petitioner Michael A. Haddle's ("Petitioner") appeal is based, 42 U.S.C. § 1985(2), requires proof of certain factual elements, such as a conspiracy, intimidation, and retaliation, which, until now, have been assumed to exist for purposes of Petitioner's appeal. However, after this Court granted the Petition for Writ of Certiorari, the Court of Appeals of the State of Georgia affirmed the granting of summary judgment in favor of Respondents and against Petitioner in a related state case between the same parties. The state law claims on which Respondents were granted summary judgment were based on the same nucleus of facts as this case and the trial court necessarily determined that Respondents did not conspire, intimidate, or retaliate against Petitioner. Federal courts must give full preclusive effect to such factual findings under 28 U.S.C. § 1738. Therefore, because the Georgia state courts have already decided factual issues that necessitate a finding for Respondents on Petitioner's 42 U.S.C. § 1985 claim, this Court should dismiss the Writ of Certiorari as improvidently granted.

## STATEMENT OF THE CASE

Petitioner originally filed a complaint (the "Federal Complaint") in federal district court against Respondents and others asserting a claim under 42 U.S.C. § 1985(2) and Georgia state law claims, including a claim under the Georgia Racketeering Influenced and Corrupt Organizations Act, O.C.G.A. § 16-14-1 et seq. ("Georgia RICO"). Both the 42 U.S.C. § 1985(2) claim and the state law claims were based on the same statement of facts in the Federal Complaint. The United States District Court for the Southern District of Georgia dismissed the § 1985(2) claim for failure to state a claim upon which relief can be granted, based on the "clear language" of direct precedent. *Haddle v. Garrison*, No. CV196-29 (S.D. Ga. June 25, 1996) (attached at Appendix A) (citing *Morast v. Lance*, 807 F.2d 926, 930 (11th Cir. 1987)). Additionally, the district court declined to retain supplemental jurisdiction over the state law claims and dismissed the state law claims without prejudice.

Petitioner then refiled the state law claims in the Superior Court of Richmond County, Georgia. With the exception of the 42 U.S.C. § 1985(2) claim, Petitioner's state court complaint (the "State Complaint") was virtually identical to the original Federal Complaint. On June 10, 1997, the Richmond County Superior Court granted summary judgment to Respondents on all of Petitioner's claims. *Haddle v. Garrison*, No. 96-RCCV-572 (Superior Court of Richmond County, Georgia, June 10, 1997) (attached at Appendix B).

Six months later, the United States Court of Appeals for the Eleventh Circuit upheld the district court's dismissal of Petitioner's § 1985(2) claim in an unpublished per curiam opinion. *See Haddle v. Garrison*, No. 96-9072 (11th Cir. Dec. 5, 1997) (attached at Appendix C). This Court then granted the Petition for a Writ of Certiorari

related to Petitioner's § 1985(2) claim on May 26, 1998. On June 16, 1998, since the granting of certiorari, the Georgia Court of Appeals issued its decision affirming the Richmond County Superior Court's grant of summary judgment in favor of Respondents. *Haddle v. Garrison*, No. A98A0020 (Ga. App. June 16, 1998) (attached at Appendix D). Petitioner's Motion for Reconsideration to the Georgia Court of Appeals was denied on July 7, 1998. *Haddle v. Garrison*, No. A98A0020 (Ga. App. July 7, 1998) (attached as Appendix E).

## REASONS WHY THE WRIT OF CERTIORARI SHOULD BE DISMISSED

### A. The Full Faith and Credit Statute.

The full faith and credit statute provides that state judicial proceedings "shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken." 28 U.S.C. § 1738. This Court has held that:

> [i]t is now settled that a federal court must give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered.

*Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81, 104 S. Ct. 892, 896 (1984).

The mandates of 28 U.S.C. § 1738 control unless the statute at issue contains an express or implied repeal of



§ 1738. *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 468, 102 S. Ct. 1883, 1890 (1982). The plain language of 42 U.S.C. § 1985(2) does not express or imply any intent to modify 28 U.S.C. § 1738.

Indeed, several circuit courts of appeals have applied preclusion principles to 42 U.S.C. § 1985 claims. *See, e.g., Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1036 (9th Cir. 1990) (§ 1985(2) claim); *Gardner v. Parson*, 874 F.2d 131, 142 (3d Cir. 1989) (§ 1985(3)); *Windsor v. The Tennessean*, 719 F.2d 155, 162 (6th Cir. 1983) (§ 1985(1) claim); *LaRocca v. Gold*, 662 F.2d 144, 148 (2d Cir. 1981) ("We see no reason why [28 U.S.C. § 1738] should not also apply to suits under § 1985."). According preclusive effect to state court decisions under the doctrine of collateral estoppel:

> not only reduce[s] unnecessary litigation and foster[s] reliance on adjudication, but also promote[s] the comity between state and federal courts that has been recognized as a bulwark of the federal system.

*Allen v. McCurry*, 449 U.S. 90, 95-96, 101 S. Ct. 411, 415 (1980).

### B. Collateral Estoppel Under Georgia Law.

Collateral estoppel, also known as estoppel by judgment under Georgia law, "precludes readjudication of an issue previously adjudicated between the parties or their privies in another action." *Department of Human Resources v. Fleeman*, 263 Ga. 756, 757, 439 S.E.2d 474,

475 (1994); *see also O.C.G.A* § 9-12-40 (1993). The doctrine applies "where an issue of fact or law is actually litigated and determined by a valid judgment, *and* the determination is essential to the judgment." *Kent v. Kent*, 265 Ga. 211, 211, 452 S.E.2d 764, 766 (1995) (citing Restatement (Second) of Judgments § 27 (1982)). These preclusion doctrines reinforce the "absolute conclusiveness of a judgment of a court of competent jurisdiction upon the parties," such that a court's judgment is "regarded as binding in every other court" until it is reversed. *Jim West Housemovers v. Cobb County*, 259 Ga. 314, 315, 380 S.E.2d 251, 252 (1989) (quoting *McRae v. Boykin*, 73 Ga. App. 67, 72, 35 S.E.2d 548 (1945)).

The Georgia Supreme Court stated that: "estoppel by judgment applies as between the same parties upon *any cause of action* to matters which were directly decided in the former suit." *Jim West Housemovers,* 259 Ga. at 314, 380 S.E.2d at 252 (quoting *Roddenberry v. Roddenberry*, 255 Ga. 715, 717, 342 S.E.2d 464 (1986)) (emphasis added). Importantly, although identity of the parties in the two actions is necessary, identity of the *claim* is not required for the collateral estoppel doctrine to apply. *Waldroup v. Greene County Hosp. Auth.*, 265 Ga. 864, 867, 463 S.E.2d 5, 7 (1995) ("[S]o long as the issue was determined in the previous action and there is identity of the parties, that issue may not be re-litigated, even as part of a different claim."). The prior judgment will be conclusive:

> not only of the thing directly decided, but of every fact which was essential to the adjudication. [Cit] 'Any conclusion which the court or jury must evidently have arrived at in order to reach the judgment or verdict rendered will be fully concluded.'

*Usher v. Johnson*, 157 Ga. App. 420, 422, 278 S.E.2d 70, 72 (1981) (quoting *Callaway v. Irvin*, 123 Ga. 344, 351(4), 51 S.E. 477 (1905)).

There is no question that Petitioner's Federal and State Complaints contain identical parties. Furthermore, summary judgment is a ruling on the merits in Georgia. *Summer-Minter & Assocs. v. Giordano*, 231 Ga. 601, 604, 203 S.E.2d 173, 176 (1974) ("[I]t is evident that an adjudication on summary judgment is an adjudication on the merits of the case."). Finally, the grant of summary judgment by the Richmond County Superior Court "shall be conclusive between the same parties . . . until the judgment is reversed or set aside." O.C.G.A. § 9-12-40; *see also McCracken v. City of College Park*, 259 Ga. 490, 491, 384 S.E.2d 648, 650 (1989).

The important determination, then, is whether the factual issues necessarily decided by the Georgia courts are the same as the factual issues underlying the case presently before this Court. Petitioner, in his 42 U.S.C. § 1985(2) claim, alleged that Respondents conspired to deter Petitioner, through "force, intimidation, or threat," from assisting with a federal investigation and to retaliate against Petitioner for his cooperation with federal authorities. Federal Complaint, ¶¶ 18, 20 (attached at Appendix F). Petitioner alleged that the act of deterrence and retaliation against him was the termination of his at will employment. Federal Complaint ¶¶ 18-19. An

essential element of both the "deterrence" and the "retaliation" prongs of a 42 U.S.C. § 1985(2) claim is the requirement of a conspiracy -- an agreement between two or more persons. *Brever v. Rockwell Int'l Corp.*, 40 F.3d 1119, 1126, 1129 (10th Cir. 1994). Therefore, if Petitioner cannot prove either intimidation or retaliation, in addition to a conspiracy, Petitioner's 42 U.S.C. § 1985(2) claim must fail.

By granting summary judgment to Respondents, the Richmond County Superior Court and, in affirming that decision, the Georgia Court of Appeals, necessarily determined that Respondents neither engaged in a conspiracy, nor intimidated or retaliated against Petitioner. Petitioner alleged these exact elements -- conspiracy to intimidate and retaliate against Petitioner through the termination of his at will employment -- as a predicate act for his claim under the Georgia RICO statute. State Complaint ¶ 19 (attached at Appendix G). Indeed, Petitioner alleged in the State Complaint that the decision to terminate his employment was made:

> for the purpose of *retaliating* against [Petitioner] for his cooperation with federal agents and in order to *intimidate* [Petitioner] and others from cooperating with federal agents or testifying in any criminal matters against them.

*Id.* (emphasis added). Additionally, Petitioner alleged that Respondents were part of a conspiracy to participate in racketeering activities. *Id.* ¶¶ 24, 25.



Moreover, the State Complaint alleged that the retaliation and intimidation were "racketeering activities" because Respondents' actions violated 18 U.S.C. § 1503 (obstruction of justice), a listed predicate act under the Georgia RICO statute. State Complaint ¶21. Importantly, the prohibitions of 18 U.S.C. § 1503 are very similar to the prohibitions of 42 U.S.C. § 1985(2). Under 18 U.S.C. § 1503, it is unlawful to "corrupt or by threats or force, or by any threatening letter or communication, influence[ ], obstruct[ ], or impede[ ], . . . the due administration of justice." Similarly, 42 U.S.C. § 1985(2) prohibits:

> conspir[ing] to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein.

The factual issues that were necessary to decide the Georgia RICO claim in the state case are the same factual issues that must ultimately be decided in this case. Did Respondents conspire? Did Respondents intimidate or retaliate against Petitioner for Petitioner's cooperation with the federal investigation? The same allegations form the basis for both Petitioner's Georgia RICO claim and his 42 U.S.C. § 1985(2) claim, i.e., the alleged conspiracy by Respondents to terminate Petitioner's at will employment. The Richmond County Superior Court by granting, and the Georgia Court of Appeals by affirming, summary judgment for the Respondents on Petitioner's Georgia RICO claim, necessarily decided that no conspiracy existed. Moreover, the courts necessarily found that Respondents did not intimidate or retaliate against Petitioner. Both of these issues were necessary to

Petitioner's Georgia RICO claim, yet the Georgia Court of Appeals agreed with the Richmond County Superior Court that the undisputed facts could not establish Petitioner's Georgia RICO claim. Under Georgia's collateral estoppel doctrine, once the Georgia courts found there was not a conspiracy, or any showing of intimidation or retaliation, no other court may re-litigate these issues.

### C. This Court Should Dismiss the Writ of Certiorari Rather Than Issue an Advisory Opinion.

Even assuming success before this Court, on remand Petitioner must prove conspiracy, intimidation, and retaliation in order to succeed on his claim under 42 U.S.C. § 1985(2). Yet, the holding of the Georgia courts collaterally estops Petitioner from re-litigating those issues. Therefore, this Court should dismiss the Writ of Certiorari as improvidently granted. Otherwise, this Court risks issuing an advisory opinion concerning a statute's breadth in a case in which the underlying merits already have been determined adverse to Petitioner.

This Court has dismissed cases after granting a writ of certiorari as a result of changed circumstances. *See, e.g.*, *Triangle Improvement Council v. Ritchie*, 402 U.S. 497, 498, 91 S. Ct. 1650, 1650 (1971) (events occurring after the grant of certiorari "have rendered this case wholly inappropriate for our review"); *see also* 2 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 4015, at 260 ("It is readily accepted that certiorari may be dismissed, even after it has been granted,



on the ground that the record does not present issues suitable for present determination.").

This case presents just such circumstances. When the Writ of Certiorari was granted in this case, the question before the Court regarding the scope of 42 U.S.C. § 1985(2) was a determinative issue in the federal case. However, once the Georgia Court of Appeals upheld the Richmond County Superior Court's judgment for Respondents, the issue before this Court in essence became moot. Regardless of the outcome of this Court's decision, Petitioner's 42 U.S.C. § 1985(2) will fail. Under 28 U.S.C. § 1738, Petitioner will be collaterally estopped from re-litigating these issues if this Court were to reverse the decisions of the district court and court of appeals and remand the case. Therefore, this Court should dismiss the Writ of Certiorari because of considerations "which were not manifest or fully apprehended at the time certiorari was granted." *Ferguson v. Moore-McCormack Lines, Inc.* 352 U.S. 521, 559, 77 S. Ct. 457, 458 (1957) (Harlan, J., concurring in part and dissenting in part).

## CONCLUSION

For the above reasons, this Court should dismiss the Writ of Certiorari as improvidently granted.

Respectfully submitted,


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